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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA-SOUTHERN DIVISION

SKECHERS U.S.A., INC., et al.,)	Case No. 2:16-cv-02820-SJO-AGR _x
)	
Plaintiffs,)	STIPULATED PROTECTIVE ORDER
v.)	
)	
ELIYA, INC., et al.,)	
)	
Defendants.)	
_____)	
)	
AND RELATED COUNTERCLAIMS)	
_____)	

STIPULATION

In order to protect confidential and/or competitively sensitive information and things produced or disclosed in connection with the instant action, plaintiffs and counterdefendants Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II and defendant and counterclaimant Eliya, Inc. (hereinafter collectively the "parties") stipulate through their respective counsel to the entry of a Protective Order, the grounds for and terms of which are set forth below.

1 A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
6 Stipulated Protective Order. The parties acknowledge that this Order does not confer
7 blanket protections on all disclosures or responses to discovery and that the protection it
8 affords from public disclosure and use extends only to the limited information or items
9 that are entitled to confidential treatment under the applicable legal principles. The
10 parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
11 Protective Order does not entitle them to file confidential information under seal; Civil
12 Local Rule 79-5 sets forth the procedures that must be followed and the standards that
13 will be applied when a party seeks permission from the court to file material under seal.
14

15 B. GOOD CAUSE GROUNDS FOR PROTECTIVE ORDER

16 This action is likely to involve trade secrets, customer and pricing lists and other
17 valuable research, development, commercial, financial, technical and/or proprietary
18 information for which special protection from public disclosure and from use for any
19 purpose other than prosecution of this action is warranted. Such confidential and
20 proprietary materials and information consist of, among other things, confidential
21 business or financial information, information regarding confidential business practices,
22 or other confidential research, development, or commercial information (including
23 information implicating privacy rights of third parties), information otherwise generally
24 unavailable to the public, or which may be privileged or otherwise protected from
25 disclosure under state or federal statutes, court rules, case decisions, or common law.
26 Accordingly, to expedite the flow of information, to facilitate the prompt resolution of
27 disputes over confidentiality of discovery materials, to adequately protect information the
28 parties are entitled to keep confidential, to ensure that the parties are permitted reasonable

1 necessary uses of such material in preparation for and in the conduct of trial, to address
 2 their handling at the end of the litigation, and serve the ends of justice, a protective order
 3 for such information is justified in this matter. It is the intent of the parties that
 4 information will not be designated as confidential for tactical reasons and that nothing be
 5 so designated without a good faith belief that it has been maintained in a confidential,
 6 non-public manner, and there is good cause why it should not be part of the public record
 7 of this case.

8 PROTECTIVE ORDER

9 The Court, having considered the terms set forth below and finding good cause
 10 therefor, hereby ORDERS that:

11 2. DEFINITIONS AND GENERAL PROVISIONS

12 As used anywhere in this Protective Order, the following words and terms are
 13 defined as indicated below:

14 2.1. Action: this federal law suit in the Central District of California, *Skechers*
 15 *U.S.A. Inc., et al. v. Eliya Inc.*, Case No. 2:16-cv-02820-SJO-AGR.

16 2.2. Challenging Party: a Party or Non-Party that challenges the designation of
 17 information or items under this Order.

18 2.3. "CONFIDENTIAL" Information or Items: - information (regardless of how it
 19 is generated, stored or maintained) or tangible things that qualify for protection under
 20 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
 21 Statement.

22 2.4 "CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items -
 23 information or Items, extremely confidential and/or sensitive "CONFIDENTIAL"
 24 Information or Items, disclosure of which to any other Party or Non-Party other than
 25 persons identified in paragraph 7.3 below would create a substantial risk of serious harm
 26 that could not be avoided by less restrictive means. The Parties agree that the following
 27 information, if not previously disclosed publicly, shall merit the "CONFIDENTIAL –
 28 ATTORNEYS' EYES ONLY" designation and shall not merit the "OUTSIDE

1 COUNSEL ONLY" designation: pricing information, financial data or information, sales
 2 information (including units sold, dollar amounts, and locations of sales), inventory,
 3 amounts imported, exported, and/or distributed, costs, profit, sales or marketing forecasts
 4 or plans, business plans, sales or marketing strategy, product development information,
 5 employee information, and other non-public information of similar competitive and
 6 business sensitivity.

7 2.5 "OUTSIDE COUNSEL ONLY" Information or Items - information or Items,
 8 extremely confidential and/or sensitive "CONFIDENTIAL" Information or Items,
 9 disclosure of which to any other Party or Non-Party other than persons identified in
 10 paragraph 7.4 below would create a substantial risk of serious harm that could not be
 11 avoided by less restrictive means. The Parties agree that the following information, if not
 12 previously disclosed publicly, shall be presumed to merit the "OUTSIDE COUNSEL
 13 ONLY" designation: manufacturing trade secrets, manufacturing facilities, engineering
 14 documents, and testing documents.

15 2.6 Designating Party: a Party or Non-Party that designates "Protected Material"
 16 as defined in paragraph 2.15 herein.

17 2.7 Disclosure or Discovery Material: all items or information, regardless of the
 18 medium or manner in which it is generated, stored, or maintained (including, among
 19 other things, testimony, transcripts, and tangible things), that are produced or generated in
 20 disclosures or responses to discovery in this matter.

21 2.8 Expert: a person with specialized knowledge or experience in a matter pertinent
 22 to the litigation who has been retained by a Party or its counsel to serve as an expert
 23 witness or as a consultant in this Action.

24 2.9 House Counsel: attorneys who are employees of a party to this Action. House
 25 Counsel does not include Outside Counsel of Record or any other outside counsel.

26 2.10 Non-Party: any natural person, partnership, corporation, association, or other
 27 legal entity not named as a Party to this action.

28 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this

1 Action but are retained to represent or advise a party to this Action and have appeared in
 2 this Action on behalf of that party or are a partner or associate at a law firm which has
 3 appeared in this Action on behalf of that party, and includes support staff.

4 2.12 Party: any party to this Action, including all of its officers, directors,
 5 employees, consultants, retained experts, and Outside Counsel of Record (and their
 6 support staffs).

7 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
 8 Material in this Action.

9 2.14 Professional Vendors: persons or entities that provide litigation support
 10 services (e.g., photocopying, videotaping, translating, preparing exhibits or
 11 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
 12 their employees and subcontractors.

13 2.15 Protected Material: any Disclosure or Discovery Material that is designated
 14 with any confidentiality designation, such as "CONFIDENTIAL" or "CONFIDENTIAL
 15 – ATTORNEYS' EYES ONLY" or "OUTSIDE COUNSEL ONLY." As defined herein,
 16 Protected Material includes all of the matter and materials identified in section 3 below
 17 (SCOPE).

18 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from
 19 a Producing Party.

20 2.17 Insurer: An authorized agent or representative of any insurance business,
 21 including support staff of that agent or representative, where the insurance business may
 22 be liable to satisfy all or part of a possible judgment in the action or to indemnify or
 23 reimburse for payments made to satisfy the judgment.

24 3. SCOPE

25 The protections conferred by this Stipulation and Order cover not only Protected
 26 Material (as defined above), but also (1) any information copied or extracted from
 27 Protected Material or information that is otherwise based in whole or in part on Protected
 28

1 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and
2 (3) any testimony, conversations, or presentations by Parties or their Counsel that might
3 reveal Protected Material. Any use of Protected Material at trial shall be governed by the
4 orders of the trial judge. This Order does not govern the use of Protected Material at trial.

5 4. DURATION

6 Even after final disposition of this litigation, the confidentiality obligations
7 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in
8 writing or a court order otherwise directs. Final disposition shall be deemed to be the later
9 of (1) dismissal of all claims and defenses in this Action, with prejudice; and (2) final
10 judgment herein after the completion and exhaustion of all appeals, rehearings, remands,
11 trials, or reviews of this Action, including the time limits for filing any motions or
12 applications for extension of time pursuant to applicable law.

13 5. DESIGNATING PROTECTED MATERIAL

14
15 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
16 Party or Non-Party that designates information or items for protection under this Order
17 must take care to limit any such designation to specific material that qualifies under the
18 appropriate standards. The Designating Party must designate for protection only those
19 parts of material, documents, items, or oral or written communications that qualify so that
20 other portions of the material, documents, items, or communications for which protection
21 is not warranted are not swept unjustifiably within the ambit of this Order.

22 Mass, indiscriminate, or routinized designations are prohibited. Designations that
23 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,
24 to unnecessarily encumber the case development process or to impose unnecessary
25 expenses and burdens on other parties) may expose the Designating Party to sanctions.

26 If it comes to a Designating Party's attention that information or items that it
27 designated for protection do not qualify for protection, that Designating Party must
28 promptly notify all other Parties that it is withdrawing the inapplicable designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this
 2 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
 3 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
 4 must be clearly so designated before the material is disclosed or produced.

5 Designation in conformity with this Order requires:

6 (a) for information in documentary form (e.g., paper or electronic documents, but
 7 excluding transcripts of depositions or other pretrial or trial proceedings), that the
 8 Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter
 9 "CONFIDENTIAL legend") or the legend "CONFIDENTIAL - ATTORNEYS' EYES
 10 ONLY" (hereinafter "HIGHLY CONFIDENTIAL legend") or the legend "OUTSIDE
 11 COUNSEL ONLY," as applicable, to each page that contains Protected Material. If only
 12 a portion or portions of the material on a page qualifies for protection, the Producing
 13 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
 14 markings in the margins). Each CONFIDENTIAL legend, each HIGHLY
 15 CONFIDENTIAL legend, and each OUTSIDE COUNSEL ONLY legend shall be
 16 conspicuous on each document and thing on which it is placed. Whenever any Expert,
 17 Professional Vendor or other Non-Party or counsel prepares any document or thing that
 18 contains on any Protected Material, the Expert, Professional Vendor or other Non-Party
 19 must affix the applicable CONFIDENTIAL legend, HIGHLY CONFIDENTIAL legend
 20 or OUTSIDE COUNSEL ONLY legend to the document or thing upon the inclusion of
 21 any Protected Material in any such document or thing.
 22

23 A Party or Non-Party that makes original documents available for inspection need
 24 not designate them for protection until after the inspecting Party has indicated which
 25 documents it would like copied and produced. During the inspection and before the
 26 designation, all of the material made available for inspection shall be deemed OUTSIDE
 27 COUNSEL ONLY. After the inspecting Party has identified the documents it wants
 28 copied and produced, the Producing Party must determine which documents, or portions

1 thereof, qualify for protection under this Order. Then, before producing the specified
2 documents, the Producing Party must affix the applicable CONFIDENTIAL legend, or
3 HIGHLY CONFIDENTIAL legend or OUTSIDE COUNSEL ONLY legend to each page
4 that contains Protected Material. If only a portion or portions of the material on a page
5 qualifies for protection, the Producing Party also must clearly identify the protected
6 portion(s) (e.g., by making appropriate markings in the margins).

7 (b) for testimony given in depositions that the Designating Party identify the
8 Disclosure or Discovery Material on the record, before the close of the deposition all
9 protected testimony. If a deposition witness is asked a question to which a response
10 would likely disclose a party's Protected Material, or if a witness would otherwise
11 disclose a party's Protected Material at a deposition, the attorney representing such party
12 may contemporaneously designate that disclosure as "CONFIDENTIAL" or
13 "CONFIDENTIAL - ATTORNEYS' EYES ONLY" or "OUTSIDE COUNSEL ONLY,"
14 as applicable, prior to its actual disclosure. Upon making such a designation, any person
15 in attendance at the deposition who is not authorized under the terms herein to receive
16 such Protected Material, may be excluded from attending the deposition during the
17 disclosure of such Protected Material;

18 (c) for information produced in some form other than documentary and for any
19 other tangible items, that the Producing Party affix in a prominent place on the exterior of
20 the container or containers in which the information is stored the applicable
21 CONFIDENTIAL legend, HIGHLY CONFIDENTIAL legend or OUTSIDE COUNSEL
22 ONLY legend. If only a portion or portions of the information warrants protection, the
23 Producing Party, to the extent practicable, shall identify the protected portion(s).

24 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
25 designate qualified information or items does not, standing alone, waive the Designating
26 Party's right to secure protection under this Order for such material. Upon timely
27 correction of a designation, the Receiving Party must make reasonable efforts to assure
28

1 that the material is treated in accordance with the provisions of this Order.

2 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

3 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
4 confidentiality at any time that is consistent with the Court's Scheduling Order.

5 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
6 process under Local Rule 37.1 et seq.

7 6.3 The burden of persuasion in any such challenge proceeding shall be on the
8 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
9 harass or impose unnecessary expenses and burdens on other parties) may expose the
10 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
11 the confidentiality designation, all parties shall continue to afford the material in question
12 the level of protection to which it is entitled under the Producing Party's designation until
13 the Court rules on the challenge.
14

15 7. ACCESS TO AND USE OF PROTECTED MATERIAL

16 7.1 Basic Principles. A Receiving Party may use Protected Material that is
17 disclosed or produced by another Party or by a Non-Party in connection with this Action
18 only for prosecuting, defending, or attempting to settle this Action. Such Protected
19 Material may be disclosed only to the categories of persons and under the conditions
20 described in this Order. When the Action has been terminated, a Receiving Party must
21 comply with the provisions of section 13 below (FINAL DISPOSITION).

22 Protected Material must be stored and maintained by a Receiving Party at a
23 location and in a secure manner that ensures that access is limited to the persons
24 authorized under this Order.

25 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
26 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
27 may disclose any information or item designated "CONFIDENTIAL" only to:

28 (a) the Receiving Party's Outside Counsel of Record in this Action, as well as
employees of said Outside Counsel of Record to whom it is reasonably necessary to

1 disclose the information for this Action;

2 (b) the officers, directors, and employees (including House Counsel) of the
3 Receiving Party to whom disclosure is reasonably necessary for this Action;

4 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
5 reasonably necessary for this Action and who have signed the "Acknowledgment and
6 Agreement to Be Bound" (Exhibit A);

7 (d) the court and its personnel;

8 (e) court reporters and their staff;

9 (f) professional jury or trial consultants, mock jurors, and Professional Vendors to
10 whom disclosure is reasonably necessary for this Action and who have signed the
11 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

12 (g) the author or recipient of a document containing the information or a custodian
13 or other person who otherwise possessed or knew the information;

14 (h) during their depositions, witnesses, and attorneys for witnesses, in the Action to
15 whom disclosure is reasonably necessary provided: (1) the deposing party requests that
16 the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted
17 to keep any Protected Material unless they sign the "Acknowledgment and Agreement to
18 Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by
19 the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
20 Protected Material may be separately bound by the court reporter and may not be
21 disclosed to anyone except as permitted under this Stipulated Protective Order;

22 (i) any mediator or settlement officer, and their supporting personnel, mutually
23 agreed upon by any of the parties engaged in settlement discussions; and

24 (j) any Insurer who has signed the "Acknowledgment and Agreement to Be
25 Bound" (Exhibit A) .

26 7.3 Disclosure of "CONFIDENTIAL - ATTORNEYS' EYES ONLY" Information
27 or Items. Unless otherwise ordered by the court or permitted in writing by the
28 Designating Party, a Receiving Party may disclose any information or item designated

1 “CONFIDENTIAL - ATTORNEYS EYES ONLY” only to:

2 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
3 employees of said Outside Counsel of Record to whom it is reasonably necessary to
4 disclose the information for this Action;

5 (b) House Counsel and their staff who may use such information only for purposes
6 of prosecuting this action or for discussing settlement;

7 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
8 reasonably necessary for this Action and who have signed the “Acknowledgment and
9 Agreement to Be Bound” (Exhibit A);

10 (d) the court and its personnel;

11 (e) court reporters and their staff;

12 (f) professional jury or trial consultants, mock jurors, and Professional Vendors to
13 whom disclosure is reasonably necessary for this Action and who have signed the
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 (g) the author or recipient of a document containing the information or a custodian
16 or other person who otherwise possessed or knew the information;

17 (h) during their depositions, witnesses ,and attorneys for witnesses, in the Action to
18 whom disclosure is reasonably necessary provided: (1) the deposing party requests that
19 the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted
20 to keep any Protected Material unless they sign the “Acknowledgment and Agreement to
21 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by
22 the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
23 Protected Material may be separately bound by the court reporter and may not be
24 disclosed to anyone except as permitted under this Stipulated Protective Order;

25 (i) any mediator or settlement officer, and their supporting personnel, mutually
26 agreed upon by any of the parties engaged in settlement discussions; and

27 (j) any Insurer who has signed the “Acknowledgment and Agreement to Be
28 Bound” (Exhibit A).

1 7.4 Disclosure of "OUTSIDE COUNSEL ONLY" Information or Items. Unless
2 otherwise ordered by the court or permitted in writing by the Designating Party, a
3 Receiving Party may disclose any information or item designated "OUTSIDE COUNSEL
4 ONLY" only to:

5 (a) the Receiving Party's Outside Counsel of Record in this Action, as well as
6 employees of said Outside Counsel of Record to whom it is reasonably necessary to
7 disclose the information for this Action;

8 (b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
9 reasonably necessary for this Action and who have signed the "Acknowledgment and
10 Agreement to Be Bound" (Exhibit A);

11 (c) the court and its personnel;

12 (d) court reporters and their staff;

13 (e) professional jury or trial consultants, mock jurors, and Professional Vendors to
14 whom disclosure is reasonably necessary for this Action and who have signed the
15 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

16 (f) the author or recipient of a document containing the information or a custodian
17 or other person who otherwise possessed or knew the information;

18 (g) during their depositions, witnesses ,and attorneys for witnesses, in the Action to
19 whom disclosure is reasonably necessary provided: (1) the deposing party requests that
20 the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted
21 to keep any Protected Material unless they sign the "Acknowledgment and Agreement to
22 Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by
23 the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
24 Protected Material may be separately bound by the court reporter and may not be
25 disclosed to anyone except as permitted under this Stipulated Protective Order;

26 (h) any mediator or settlement officer, and their supporting personnel, mutually
27 agreed upon by any of the parties engaged in settlement discussions; and

28 (i) any Insurer who has signed the "Acknowledgment and Agreement to Be

Bound” (Exhibit A).

7.5 Service of “Acknowledgment and Agreement to Be Bound” (Exhibit A).

The signed original of each Acknowledgment and Agreement to Be Bound (Exhibit A) shall be served by the attorney who procured it on counsel for the opposing party as follows:

(1) for an expert witness or rebuttal-only expert witness, no later than the earlier of (a) the time at which that witness is disclosed to opposing counsel or (b) the final disposition of this litigation as defined in paragraph number 4 above, and

(2) for any Professional Vendor, expert consultant, professional jury or trial consultant, mock juror, Insurer and any other Non-Party who received any Protected Material, contemporaneously with the earlier of (a) the final disposition of this litigation as defined in paragraph number 4 above or (b) the disclosure of such person to opposing counsel.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL” or “CONFIDENTIAL - ATTORNEYS’ EYES ONLY” or “OUTSIDE COUNSEL ONLY,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the

subpoena or court order shall not produce any information designated in this action as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" or "OUTSIDE COUNSEL ONLY" before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party's permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" or "OUTSIDE COUNSEL ONLY" Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

(d) If a Party seeks or obtains any Disclosure or Discovery Material from a Non-Party, any Party may designate as Protected Material any such Disclosure or Discovery Material so long as the material otherwise meets the conditions for being designated as Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of

1 the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
2 This provision is not intended to modify whatever procedure may be established in an e-
3 discovery order that provides for production without prior privilege review. Pursuant to
4 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the
5 effect of disclosure of a communication or information covered by the attorney-client
6 privilege or work product protection, the parties may incorporate their agreement in the
7 stipulated protective order submitted to the court.

8 12. MISCELLANEOUS

9 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
10 to seek its modification by the Court in the future.

11 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
12 Order no Party waives any right it otherwise would have to object to disclosing or
13 producing any information or item on any ground not addressed in this Stipulated
14 Protective Order. Similarly, no Party waives any right to object on any ground to use in
15 evidence of any of the material covered by this Protective Order.

16 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
17 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
18 under seal pursuant to a court order authorizing the sealing of the specific Protected
19 Material at issue. If a Party's request to file Protected Material under seal is denied by the
20 court, then the Receiving Party may file the information in the public record unless
21 otherwise instructed by the court.

22 13. FINAL DISPOSITION

23 After the final disposition of this Action, as defined in paragraph 4, within 60 days
24 of a written request by the Designating Party, each Receiving Party must return all
25 Protected Material to the Producing Party or destroy such material. Each Expert,
26 Professional Vendor, Consultant, and any other Non-Party who received any Protected
27 Material must return all Protected Material to the attorney who procured the
28

1 Acknowledgment and Agreement to Be Bound (Exhibit A) under which the Protected
2 Material was provided to the Expert, Professional Vendor, Consultant, or other Non-
3 Party. As used in this subdivision, “all Protected Material” includes all copies, abstracts,
4 compilations, summaries, and any other format reproducing or capturing any of the
5 Protected Material. Whether the Protected Material is returned or destroyed, the
6 Receiving Party must submit a written certification to the Producing Party (and, if not the
7 same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
8 (by category, where appropriate) all the Protected Material that was returned or
9 destroyed, (2) identifies each Expert, Professional Vendor, Consultant, or other Non-
10 Party to whom the Receiving Party provided Protected Material, or who otherwise
11 received Protected Material, and affirms that each such person returned to the Receiving
12 Party all such Protected Material and (3) affirms that the Receiving Party has not retained
13 any copies, abstracts, compilations, summaries or any other format reproducing or
14 capturing any of the Protected Material. Notwithstanding this provision, Counsel are
15 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and
16 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
17 expert reports, attorney work product, and consultant and expert work product, even if
18 such materials contain Protected Material. Any such archival copies that contain or
19 constitute Protected Material remain subject to this Protective Order as set forth in
20 Section 4 (DURATION).

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1 14. Any violation of this Order may be punished by any and all appropriate
2 measures including, without limitation, contempt proceedings and/or monetary sanctions.
3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
4

5 Kleinberg & Lerner, LLP

Michael N. Cohen,
Joshua H. Eichenstein, of
COHEN IP LAW GROUP, P.C.

8 October 25, 2016

October 25, 2016

9 By: /s/Marshall A. Lerner

By: /s/ Michael N. Cohen

10 Marshall A. Lerner

Michael N. Cohen

11 Vivian Z. Wang

Joshua H. Eichenstein

12 Attorney for Plaintiffs Skechers U.S.A.,
Inc. and Skechers U.S.A., Inc. II

Attorneys for Defendant/Counterclaimant
Eliya, Inc.

13 I, Marshall A. Lerner, attest pursuant to
14 L.R. 5-4.3.4(a)(2)(i) that all other
15 signatories listed, and on whose behalf this
16 filing is submitted, concur in the filing's
17 content and have authorized the filing.
18
19

20 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

22 DATED: October 25, 2016



23 Alicia G. Rosenberg
24 United States Magistrate Judge
25
26
27
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full street address], declare under penalty of perjury
 that I have read in its entirety and understand the Stipulated Protective Order that was
 issued by the United States District Court for the Central District of California on [date]
 in the case of *Skechers U.S.A. Inc. et al. v. Eliya Inc. Case No. 2:16-cv-02820-SJO-AGR*.
 I agree to comply with and to be bound by all the terms of this Stipulated Protective
 Order and I understand and acknowledge that failure to so comply could expose me to
 sanctions and punishment in the nature of contempt. I solemnly promise that I will not
 disclose in any manner any information or item that is subject to this Stipulated
 Protective Order to any person or entity except in strict compliance with the provisions of
 this Order. Under penalty of perjury, I represent that: (1) I am not a past or current
 employee, officer, director, manager, managing agent, or member of a Party or of a
 Party's competitor, (2) I am not related to, nor am I a friend of, any employee, officer,
 director, manager, managing agent, or member of a Party or of a Party's competitor, (3) I
 do not anticipate becoming an employee, officer, director, manager, managing agent, or
 member of a Party or of a Party's competitor.

I further agree to submit to the jurisdiction of the United States District Court for
 the Central District of California for the purpose of enforcing the terms of this Stipulated
 Protective Order, even if such enforcement proceedings occur after termination of this
 action. I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and telephone
 number] as my California agent for service of process in connection with this action or
 any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____